

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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JUSTIN RUBERT,

Civil Action No.:



Plaintiff,

**COMPLAINT FOR
VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT**

DEMAND FOR JURY TRIAL

SANTANDER CONSUMER USA INC

Defendant(s).

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Plaintiff JUSTIN RUBERT (“Plaintiff”), by and through his attorney, M. Harvey Rephen & Associates, P.C., by Edward B. Geller, Esq., P.C., Of Counsel, as and for his Complaint against the Defendant SANTANDER CONSUMER USA INC, (hereinafter referred to as Defendant), respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant’s violation(s) of Title 47 of the United States Code, §227 commonly known as the Telephone Consumer Protection Act (TCPA).

PARTIES

2. Plaintiff JUSTIN RUBERT is a resident of the State of NEW JERSEY residing at 300 GREENWOOD LOOP ROAD, BRICK, NJ 08724.

3. Defendant (s) SANTANDER CONSUMER USA INC, has a Corporate Headquarters located at 1010 WEST MOCKINGBIRD LANE SUITE 100 DALLAS, TX 75247.



JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 USC §1331 and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

6. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “5” herein with the same force and effect as if the same were set forth at length herein.

7. On or about October 2017 the Plaintiff started receiving automated calls to his cell phone number of 732-597-8841 from the Defendant.

8. On or about October 23th, 2017 the Plaintiff received an automated message that stated “Hello this is Santander Consumer USA please contact our servicing department using our toll-free number at 1-888-222-4227 again our toll-free number is 1-888-222-4227. You may also access your account online at www.myautoaccount.com. Santander consumer USA appreciates your prompt response this is a recording.”

9. On October 24th 2017 in response to the message the Plaintiff called the Defendant and connected was connected with a male representative. The Plaintiff explained that he received

a message and wanted to know what it was about. The Plaintiff also asked for the phone calls to stop.

10. The representative stated that the phone call they placed was in the beginning of the month. The Plaintiff informed the representative that the phone call he received was the previous day.

11. The representative looked into the account and gave the Plaintiff all the current information. The representative then asked if there was anything else he could assist the Plaintiff with.

12. The Plaintiff stated again that he did not want to receive any more calls and the conversation was concluded.

13. After the conclusion of the call and the requests for the calls to stop the Defendant continued to call the Plaintiff. To date the Plaintiff has received at least 150 calls to his cell phone from the Defendant after October 24, 2017.

FIRST CAUSE OF ACTION
(Violations of the TCPA)

14. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered “1” through “13” herein with the same force and effect as if the same were set forth at length herein.

15. According to the Telephone Consumer Protection Act 47 USC §227(b)(A)(iii), “It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States (A) to make any call (other than a call made for emergency purposes or made with the prior consent of the called party) using any automatic telephone dialing system or an artificial or pre-recorded voice--- (iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other

radio common carrier service, or any service for which the called party is charged for the call, unless such call is made solely to collect a debt owed to or guaranteed by the United States.”

16. It has been determined that the statute language adding “or” any service for which the called party is charged, is not accurately interpreted to require that Plaintiff must claim that Defendant’s calls incurred charges. See *Breslow v. Wells Fargo Bank, N.A.* 857 F. Supp 2d 1316, 1319 (S.D. Fla. 2012) and *Cavero v. Franklin Collection Serv., Inc.*, 2012 WL 279448 (S.D. Fla. 2012). A number of Courts have addressed the issue of a Plaintiff being charged with all agreeing that the TCPA does not require a Plaintiff who received calls on his/her *cell phone* to allege that he/she was charged for the call. For example, in *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674 (S.D. Fla. 2013), the Court held that “The TCPA does not require the plaintiff to be ‘charged for’ the calls in order to have standing to sue.” In *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242 (11th Cir. 2014), the Court stated: If the phrase ‘any service for which the called party is charged for the call’ requires that the party be charged per call for the ‘paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service’ in order for the party to prohibit autodialled calls, then the listing of these services would be superfluous because they are already included under them ‘any service for which the called party is charged.’ On the other hand, reading ‘any service for which the called party is charged for the call’ as an additional item beyond any call to a ‘paging service, cellular telephone service, specialized mobile radio service, or other common carrier service,’ regardless of whether the called party is charged, gives independent meaning to each term.”

17. It is thus clear from the plain language of the TCPA, and its considerable body of resultant case law that the TCPA is violated when a cellular telephone is called with an automatic dialer without consent, even if no charges are alleged or incurred.

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17. It is thus clear from the plain language of the TCPA, and its considerable body of resultant case law that the TCPA is violated when a cellular telephone is called with an automatic dialer without consent, even if no charges are alleged or incurred.

18. With the autodialed calls to Plaintiff's telephone commencing on or about October 2017 and continuing at a rate of approximately (150) times thereafter, the Defendant violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

19. The Defendant, having been informed that Plaintiff requested that no further calls be received, willfully violated the TCPA at least (150) times.

20. Pursuant to the TCPA Omnibus Declaratory Ruling and Order, July 2015, paragraphs 138 and 139, communications from banking institutions which are exempt "...are all intended to address exigent circumstances in which a quick, timely communication with a consumer could prevent considerable consumer harms from occurring or, in the case of the remediation calls, could help quickly mitigate the extent of harm that will occur." Pursuant to Paragraph 139, (3) and (7) "In light of these considerations, we adopt the following conditions for each exempted call (voice call or text message) made by a financial institution:
3) voice calls and text messages are strictly limited to purposes discussed in paras. 129-137 above and must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;
7) a financial institution must honor opt-out requests immediately."

21. Defendant is in violation of the TCPA paragraphs 139 (3) for, upon information and belief, having used their calls for debt collection and (7), failing to honor Plaintiffs' desire to opt out of telephone communications despite Plaintiff's clear, unequivocal and repeated requests that such automatic calls cease.

22. Defendant violated various provisions of the TCPA, including but not limited to 47 USC §227(b)(A)(iii).

DEMAND FOR TRIAL BY JURY

23. Plaintiff hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment from the Defendant as follows:

- A. For trebled damages to be awarded to the Plaintiff in accordance with the TCPA, for each of the Defendant's willful or knowing violations of the TCPA.
- B. Declaration that the Defendant's practices violated the TCPA;
- C. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: February 8, 2018

Respectfully submitted,



Edward B. Geller, Esq.
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Attorney for the Plaintiffs', JUSTIN RUBERT

TO: SANTANDER CONSUMER USA INC
1010 WEST MOCKINGBIRD LANE SUITE 100
DALLAS, TX 75247

(Via Prescribed Service)

Clerk of the Court,
United States District Court, District of New Jersey
Clarkson S Fisher Building & U.S. Courthouse
402 East State Street Room 2020
Trenton, New Jersey 08608

(Via Electronic Court Filing)